

# CITY COUNCIL AGENDA ITEM COVER MEMO

Agenda Item Number \_\_\_\_\_

Meeting Type: Regular

Meeting Date: 9/26/2013

Action Requested By:  
Engineering

Agenda Item Type  
Resolution

Subject Matter:

Assignment of Agreement with ICA Engineering, Inc.

Exact Wording for the Agenda:

Resolution authorizing the Mayor to enter into an agreement with ICA Engineering, Inc. to accept the assignment of the Agreement, as of July 15, 2013, between the City of Huntsville and Florence & Hutcheson, Inc. – Res. No. 12-1071

**Note: If amendment, please state title and number of the original**

Item to be considered for: Action

Unanimous Consent Required: No

Briefly state why the action is required; why it is recommended; what Council action will provide, allow and accomplish and; any other information that might be helpful.

Assignment of Agreement with ICA Engineering, Inc. to accept the assignment of contracts owned by Florence & Hutcheson, Inc. as of July 15, 2013 (See Exhibit A). Agreement is at no cost to the City.

Associated Cost:

Budgeted Item: Select...

MAYOR RECOMMENDS OR CONCURS: Select...

Department Head: Kathy Marti

Date: 9/12/13

revised 3/12/2012

# ROUTING SLIP CONTRACTS AND AGREEMENTS

Originating Department: **Engineering**

Council Meeting Date: **9/26/2013**

Department Contact: **Lynn Majors**

Phone # **256-427-5201**

Contract or Agreement: **Assignment of Agreement**

Document Name: **ICA Engineering Acquired Florence & Hutcheson**

City Obligation Amount: **N/A**

Total Project Budget: **N/A**

Uncommitted Account Balance: **N/A**

Account Number: **No City Funds Involved**

## Procurement Agreements

<b><u>Not Applicable</u></b>	<b><u>Not Applicable</u></b>
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## Grant-Funded Agreements

<b><u>Not Applicable</u></b>	<b>Grant Name:</b>
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Department	Signature	Date
1) Originating	<i>Kathy Martin</i>	9/13/13
2) Legal	<i>Henry Cates</i>	9/13/13
3) Finance	<i>[Signature]</i>	9/17/13
4) Originating		
5) Copy Distribution		
a. Mayor's office (1 copies)		
b. Clerk-Treasurer (Original & 2 copies)		

**RESOLUTION NO. 13-\_\_\_\_\_**

**BE IT RESOLVED** by the City Council of the City of Huntsville, Alabama, that the Mayor be, and he is hereby authorized, to enter into an agreement with ICA Engineering, Inc. for Assignment of the Agreement, as of July 15, 2013, between the City of Huntsville and Florence & Hutcheson, Inc. - Res. No. 12-1071, in Huntsville, Alabama, on behalf of the City of Huntsville, a municipal corporation in the State of Alabama, which said agreement is substantially in words and figures similar to that document attached hereto and identified as "Assignment of the Agreement, as of July 15, 2013, with ICA Engineering, Inc. and the City of Huntsville, Alabama - Res. No. 12-1071" consisting of a total of three (3) pages plus two (2) additional pages consisting of Exhibit "A", and the date of September 26, 2013, appearing on the margin of the first page, together with the signature of the President or President Pro Tem of the City Council, and an executed copy of said document being permanently kept on file in the Office of the City Clerk of the City of Huntsville, Alabama.

**ADOPTED** this the 26th day of September, 2013.

\_\_\_\_\_  
President of the City Council of  
the City of Huntsville, Alabama

**APPROVED** this the 26th day of September, 2013.

\_\_\_\_\_  
Mayor of the City of Huntsville,  
Alabama

Assignment of the Agreement, as of July  
15, 2013, with ICA Engineering, Inc.  
and the City of Huntsville, Alabama -  
Res. No. 12-1071

**ASSIGNMENT, ASSUMPTION, AND MODIFICATION AGREEMENT**

**THIS ASSIGNMENT, ASSUMPTION, AND MODIFICATION AGREEMENT** (the "Agreement"), dated effective as of July 15, 2013, (the "Effective Date"), by and between **FLORENCE & HUTCHESON, INC.**, an Alabama corporation (the "Assignor"), **ICA ENGINEERING, INC.**, (the "Assignee"), and **THE CITY OF HUNTSVILLE, ALABAMA**, an Alabama municipal corporation (the "City").

**WHEREAS**, the Assignor and Assignee are parties to A Merger Agreement, dated July 15, 2013, providing for the purchase and sale of most of the assets owned by Assignor (the "Purchase Agreement"); and

**WHEREAS**, pursuant to the terms of the Purchase Agreement, the Assignor is required to assign certain contracts to the Assignee, and the Assignee is required to assume certain contracts and obligations of Seller; and

**WHEREAS**, Assignor desires to assign to Assignee, all right, title and interest of Assignor to Assignee in those certain contracts with the City described on Exhibit "A" attached hereto (the "Contracts") and the City consents to the assignment of the Contracts pursuant to the terms hereof.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. **ASSIGNMENT AND ASSUMPTION**. To the extent permitted by applicable law, the Assignor hereby assigns, transfers and releases to the Assignee all of the Assignor's right, title and interest in, to and under all of the Contracts. Additionally, Assignee agrees to pay, perform and discharge as and when due each of the obligations, responsibilities and liabilities of the Assignor and/or Assignee under the Contracts arising from and after the Effective Date. The City hereby consents to and joins in the assignment of the Contracts by Assignor and the assumption of the Contracts by Assignee.

**President of the City Council of the City  
of Huntsville, AL**

**Date: September 26, 2013**

2. **INSURANCE.** Assignee shall secure and maintain professional liability insurance, as described in the Contracts, covering exposure relating to any work performed on the Contracts both before and after the Effective Date. The insurance is to be placed with insurers with an A.M. Best's rating of no less than B+ V. The City shall be indicated as a certificate holder hereunder and Assignee shall furnish the City with the certificates of insurance reflecting the coverage required by this document. The A.M. Best rating and deductibles, if applicable, shall be indicated on the respective certificates of insurance for each insurance policy.

The certificate of insurance for the insurance policy is to be signed by a person authorized by that insurer to bind coverage on its behalf. The City reserves the right to require complete, certified copies of the required insurance policy at any time.

3. **BINDING EFFECT: AUTHORITY.** This Agreement shall inure to the benefit of and shall be binding upon the parties and their heirs, successors and assigns. The parties agree to do such other acts and to execute and deliver such further and additional instruments, agreements and other documents as may be necessary to evidence or carry out the provisions of this Agreement. The parties each represent and warrant that each has taken all action necessary to authorize the agreements set forth herein and that the execution, delivery, and performance of this Agreement by the parties shall not violate any agreement by which both parties hereto are bound.

4. **ENTIRE AGREEMENT.** This Agreement constitute the entire agreement between the Assignor, Assignee, and the City with respect to the transactions contemplated herein, and supersede all prior understandings or agreements between the parties relating to such transactions.

5. **GOVERNING LAW.** This Agreement shall be construed in accordance with and governed by the laws of the State of Alabama.

6. **EXECUTION BY COUNTERPART.** This Agreement may be executed by facsimile and in two (2) or more counterparts, each of which when so executed and delivered (including delivery by facsimile) shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

**ASSIGNOR:**

**FLORENCE & HUTCHESON, INC.**

**ATTEST:**

Amanda Mason

By: James D. Zue

Its: Alabama Operations Manager

ATTEST:

Amanda Mason

**ASSIGNEE:**

**ICA ENGINEERING, INC.**

By: James D. Hise

Its: Alabama Operations Manager

**CITY:**

**THE CITY OF HUNTSVILLE,  
ALABAMA**

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_  
Tommy Battle, Mayor





September 9, 2013

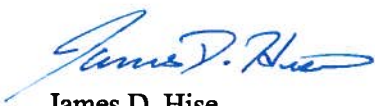
City of Huntsville  
320 Fountain Circle, S.W.  
Huntsville, AL 35801

Dear Ms. Martin:

In 2010, Florence & Hutcheson (F&H) was acquired by Infrastructure Corporation of America (ICA). Effective July 15, 2013, Florence & Hutcheson, Inc. has changed its name to ICA Engineering, Inc. and as of this date, ICA Engineering, Inc. will be assuming all contracts between the City of Huntsville and Florence & Hutcheson, Inc.

Please let me know if you have any questions.

Sincerely,



James D. Hise  
Alabama Operations Manager  
ICA Engineering, Inc.

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*Strengthening America's Infrastructure*

**ASSIGNMENT, ASSUMPTION, AND MODIFICATION AGREEMENT**  
**ICA Engineering, Inc.**

**EXHIBIT "A"**

<i>PROJECT NAME</i>
County Line Road Widening and Improvements, Project No. 65-13-RD04, Res. No. 12-1071